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C O N F I D E N T I A L SECTION 01 OF 02 NAIROBI 004783

SIPDIS

LONDON AND PARIS FOR AFRICA WATCHERS

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SUBJECT: REFERENDUM: LAST DAYS AND LAST DITCH EFFORTS

REF: NAIROBI 4143

Classified By: A/Political Counselor Lisa Peterson for reasons 1.4 (b,d)  
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**¶11.** (C) Summary: In the waning days of the referendum campaign ahead of the vote on November 21, the pro-draft ("Yes" or Banana) team has resorted to measures of questionable democratic integrity to ensure a win, including shutting down an opposition radio station and "suggesting" that civil servants vote "Yes." Troubled by developments, the Electoral Commission has expressed concerns over the integrity of the process, while the political maneuvering and campaigning continue unabated. The highly emotionally charged nature of the constitutional review, and the lengths to which the "Yes" team has gone to ensure a victory, suggest that whatever the result, the vote will not be the end of the process. END SUMMARY.

DESPERATE MEASURES?

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**¶12.** (U) On November 16, Communication Commission of Kenya (CCK) officials delivered a letter to KASS FM, a Kalenjin vernacular radio station, citing complaints about the nature of the station's broadcasts, and shut down the organization for one week. KASS, as well as other media, immediately cried foul, complaining bitterly that the move was an obviously political one to silence what is regarded as an Orange ("No" campaign) radio station. Politicians from the affected area joined the outcry, noting that their constituents have few other sources for news and information in their own language. The closure, which was front page news the following day, sparked violence of its own. The Daily Nation reported on November 17 that three people were seriously injured as a result of a fight in which some accused "Yes" supporters of instigating the station's shut down. According to government spokesman Alfred Mutua, KASS had called for violent agitation, a claim the CCK will investigate.

**¶13.** (SBU) On November 17, the Kenya Times reported that head of the civil service, Ambassador Francis Muthaura "ordered" all civil servants to vote yes. Muthaura was quoted as having said at a Public Service Commission event that the proposed draft constitution would benefit civil servants and therefore "there is no reason for them to remain neutral." In October, some sectors of the civil service had been promised pay raises in one of the first of the Banana giveaways (reftel).

ELECTORAL COMMISSION UNCOMFORTABLE

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**¶14.** (C) Samuel Kivuitu, Chairman of the Electoral Commission of Kenya, the organization responsible for running the referendum, shared with a diplomatic colleague some of his serious concerns about the upcoming vote. Kivuitu expressed skepticism about the Kenya Police Service, charged with ensuring the referendum takes place peacefully. He characterized the organization as biased and unprofessional and lamented that there would be better security coverage in "Yes" strongholds than in "No". Nonetheless, the Chairman noted that he had requested the deployment of additional police officers on polling day, but the government had not responded to him. Kivuitu was generally worried about the disparity between areas that were firmly Banana or Orange, particularly that electoral officials in these highly polarized areas were not neutral. Anticipating vote fraud, he speculated that there would be many dead people voting. He remarked that he expected a 60 percent voter turnout (as opposed to 90 percent reflected in a recent opinion poll, the results of which were not publicly released) which raised his concern over excess ballot papers, as the ECK had ordered based on 100 percent participation. Kivuitu stated that he was worried about intimidation of ECK officials, and that he had himself received a number of threats already.

UNTIL THE LAST MOMENT

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**¶15.** (C) There has been no let up in the political maneuvering in the last few days before the vote. Controversial Nairobi Member of Parliament, David Mwenje, who had earlier defected

from the "Yes" side to the "No", and was later arrested for disrupting a meeting held by his former team, announced on November 16 that he had switched sides again. (NOTE: Mwenje unashamedly confessed to Poloff in September that he had accepted 100,000 shillings from the Banana team and then left for Orange. Given Mwenje's history of opportunistically changing sides, it is unclear whether his defection will convince his constituents to alter their voting plans. END NOTE.)

16. (C) While rumors had circulated that an Orange rally scheduled for Nyayo Stadium had been canceled as it coincided with another event at the same venue (and a Banana rally at a nearby Nairobi location), the two end-of-campaign events will be held, simultaneously and in close proximity to each other, on Saturday, November 19. Police have said they will be present in large numbers and are prepared to ensure the day is peaceful. The following day, 7:00 A.M. marks the official end of the campaign period: 24 hours before polls open.

17. (C) COMMENT: Having already demonstrated the lengths to which it is willing to go to win approval for the draft constitution, the "Yes" team, if it loses, seems unlikely to graciously accept defeat and will use its considerable resources to fend off suggestions that it has suffered a vote of no confidence. The "No" team, if it is not successful, will find plenty of fuel to argue against the credibility of the vote. The ECK's private lack of confidence in the polling procedure is worrisome and could portend a prolonged and heated debate well after November 21. END COMMENT.

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